THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.13253 of 2006

ORDER :

Heard the counsel.

The writ petition is filed praying for a Writ, Order, or direction, more in the nature of the writ of Certiorari calling for the records relating to the impugned rejection order vide No.112/198/96-FF(HC)(A), dated 24-04-2006 issued by the respondent No.1 and quash the same by declaring that the petitioner is entitled for grant of freedom fighters pension on par with similarly situated persons with all consequential arrears with effect from the date on which the State Government had submitted the enquiry report to the respondents by holding that the impugned proceedings issued by the respondent No.1 is arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India and pass such other orders.

It is stated that the petitioner along with nine others filed W.P.No.16809 of 1997 before this Hon'ble Court aggrieved by the action of the respondent No.1 in not placing his application before the Screening Committee to consider his case for grant of Freedom Fighters Pension and this Hon'ble Court while disposing of the above writ petition on 25-07-1997, directed the first respondent to place the petitioner's application before the Screening committee along with other petitioners in that writ petition. In view of the above said direction, the respondent No.1 herein had placed petitioner's application along with other petitioners' applications before the Screening Committee on 17-12-1997 with file No.112/198/96 at Agenda Serial No.31 and the above said committee was recommended

his case for grant of Freedom Fighters Pension. There are ten petitioners in W.P.No.16809 of 1997; they are (1) Raavi Narayana, (2) Nanjal Venkata Ramaiah, (3) Kolli Lakshmi Bai, (4) Adapa Venkamma, (5) Vanama Pullaiah, (6) Mutheneni Venkateswarlu (petitioner herein), (7) Nallamothu Seshaiah, (8) Vankayalapati Seetharamaih, (9) Kondineni Satyanarayana, (10) Amaraneni Lakshminarayana. It is stated that petitioner reliably learned that the petitioners, 1, 3, 4 and 5 had already got pension sanction proceedings and whereas the second petitioner's case was rejected on the ground that the camp certificate of Sri Ravella Janaki Ramaiah is not recognized camp. But, petitioner's case has not been considered so far by the first respondent, though the State Government had submitted inquiry report on 28-04-2003 in letter No.18998/FF1/A2/2003-1. The petitioner respectfully submit that his counsel had issued a legal notice to the first respondent on his behalf and also on behalf of one Smt.Kolli Lakshmi Bai on 18-03-2004 advising the first respondent to consider their case for grant of Freedom Fighters Pension. But, the first respondent had considered only the case of Smt.Kolli Lakshmi Bai vide No.112/215/96. Then, petitioner submitted a representation on 20-09-2004, 29-10-2004 and 27-01-2005 to the first respondent and requested to sanction the freedom fighters pension. Petitioner also personally gone to the respondents office and submitted an application on 15-12-2004 in the grievance cell to redress his grievance. But, the office had returned his application endorsing that his case had been returned to the second respondent without giving any reason and that far not considered and sanctioned the Freedom Fighters

Pension. Aggrieved by the same, petitioner filed a W.P.No.9995 of 2005, which had been disposed of by this Court on 01-09-2005 directing the respondents to take appropriate decision for sanction of Freedom Fighters Pension within 8 weeks. But, the respondents herein had not considered his case. At that juncture, petitioner filed a contempt case and after issuing notices in the contempt case, the respondents herein had issued the impugned proceedings dated 24-04-2006 rejecting his case for grant of Freedom Fighters Pension.

It is further submitted that while things stood thus, surprisingly the impugned proceedings dated 24-04-2006 from the first respondent rejecting his case for grant of F.F. Pension on frivolous and baseless grounds had been issued, which is illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India. It is further submitted that in all the cases where the Hyderabad Special Screening Committee had recommended the applications and then a recommendation had been made by the Enquiry Officer and by the State Government, then the respondent had issued the sanction proceedings granting Freedom Fighters Pension. It is stated that it is pertinent to submit here that only in petitioner's case a frivolous and a technical objection had raised and rejected his case for grant of Freedom Fighters Pension. The respondent No.1 had failed to exercise his jurisdiction for grant of Freedom Fighters Pension to the petitioner on par with the similarly placed persons. Therefore, the impugned action of the respondent No.1 would amounts to discrimination being violation of Articles 14 and 21 of the Constitution of India. Further it is stated that in the impugned rejection order the respondent No.1 had taken a technical ground saying that

there is no valid recommendation slip of Hyderabad Special Screening Committee and the consideration itself does not ipso facto imply recommendation. In this connections, petitioner respectfully submit that the procedure for placing application before the Special Screening Committee is that the respondent initially would verify the application and then the file number would be given and the said application would be included in the list of cases, which is called as agenda, and would be placed before the Hyderabad Special Screening Committee. Every application would be attached with a covering slip which would be filled up by the respondent and placed before the screening committee. Then the members of the Hyderabad Special Screening Committee would consider the application and which had been recommended by the members and the filled proformate would be signed by the committee members.

In petitioner's case, his application had been placed before the Screening Committee in pursuance of the direction of this Hon'ble Court after duly verifying his application and issuing file No.112/198/96 and then only the committee had considered his application and recommended for grant of F.F. Pension. It is a duty of the respondent No.1 in filling the proformate, which is now said to be attached to the petitioner's application and signed by the Committee Members. Therefore, petitioner cannot be penalized for the respondents' mistake and the respondents have no jurisdiction to reject his application on technical ground for grant of F.F. Pension. Therefore, the impugned order has been vitiated in the eye of law and hence liable to be set aside.

It is also averred that the second ground taken by

the respondent in the impugned rejection order was that the signature of the committee Members had been undated. In this connection, petitioner submits that no recommendation slip had been signed by the committee members with date. The agenda/list of the applications placed before the committee as on that date would be treated that as a date on which the committee members had considered and recommended and therefore such type of technical objection was untenable in the eye of law as held by the Hon'ble Supreme Court. The other objections taken by the respondent No.1 in the impugned rejection order was that one Member had not signed on the recommendation slip. In this connection, petitioner submits that out of 12 members, to his remembrance, 10 members had signed on his recommendation slip i.e., 90% of the committee members had accepted and recommended for grant of F.F. pension to him. Merely not signing the recommendation slip by one member does not amount to non-recommendation and there is no such ruler to reject his application on that ground. Petitioner respectfully submit that the respondent had included his name in the recommended list for grant of F.F. pension and the same list had been forwarded to the State Government for submission of verification/enquiry report along with other recommended cases and in turn the enquiry authority and the State Government were pleased to recommend his case for grant of F.F. pension. Therefore, it is stated that passing of the impugned rejection order on technical grounds at that juncture is illegal, arbitrary and discrimination being violative of Articles 14 and 21 of the Constitution of India. It is further submitted that the Hon'ble Apex Court held that the

applications could not be rejected on technical grounds and should be considered fairly on merits and come to a conclusion that there is a prima facie evidence to show that he is a genuine Freedom Fighter. Therefore, taking such technical grounds, particularly at this juncture rejecting petitioner's application for grant of F.F. pension is illegal, arbitrary and discrimination being violative of Articles 14 and 21 of the Constitution of India and petitioner cannot be penalized for the clerical mistake done by the respondents in filling up the proformate and therefore the impugned order is liable to be set aside by declaring that petitioner is entitled for Freedom Fighters Pension on par with other similarly situated persons with all consequential arrears. In the above circumstances, the petitioner approached this Court by filing the present writ petition.

In the counter-affidavit filed in the background of the case it is stated that in this connection all persons who had taken part in freedom movement in some way or the other are not eligible for Samman Pension under the "Swatantrata Sainik Samman Pension Scheme, 1980" (the scheme). Only specified category of freedom fighters, who fulfill the conditions of the scheme by furnishing the proof of claimed sufferings of the nature and in the manner specified in the Scheme itself are eligible for Samman Pension. Further, it is stated that the claims of Samman Pension can be considered by the Central Government only when they were duly verified and recommended by the State Governments/U.T. Administrations concerned, provided the report indicates the basis of such recommendations in accordance with the provisions of the Scheme. No action is, therefore,

possible on the application sent directly to the Central Government without routing it through the State Government/U.T. Administration concerned. As per the scheme, the verification and recommendation report is mandatory in view of the fact that the documents and other evidence, which substantiate the claims, are in the possession of the State Governments/U.T. Administrations and not of the Central Government. It is also averred that the claims of the persons who applied for pension pertaining to border camps suffering in Hyderabad Liberation Movement have not been accepted initially, as they had not fulfilled the eligibility criteria under the Swatantrata Sainik Samman Pension Scheme. The Central Government constituted a Special Screening in 1983 under the Chairmanship of Shri Govind Bhai Shroff to scrutinize applications of persons who claimed suffering in the border camps during the Hyderabad Liberation Movement spanning the present States of Andhra Pradesh, Karnataka and Maharashtra in the erstwhile State of Hyderabad. Subsequently, it was decided in June, 1985, with the approval of the Cabinet, to treat the sufferings in Border Camps at par with undergone sufferings as defined in the Scheme.

Further it is averred in para 8 that as per the provisions of the Scheme, a person who on account of his participation in freedom struggle remained underground for six months or more is eligible for pension, provided he was;

(i) A proclaimed offender; or

(ii) One on whom an award for arrest or head was announced; or

(iii) One for whose detention, order was issued but not

served.

Voluntary underground suffering or self-exile sufferings for party work under command of the party leaders are not covered as eligible suffering for pension under the Scheme.

It is averred in para 9 that the claim of underground suffering is considered subject to furnishing of the following evidences:-

(i) Primary Evidence:

Documentary evidences by way of Court's/Government's orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention; or

(ii) Secondary Evidence:

Where records of the relevant period are not available, a Non-availability of Records Certificate (NARC) from the concerned State/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who had proved jail suffering of a minimum two years and who happened to be from the same administrative unit.

Further it is stated that the claim of underground suffering is considered on furnishing of the following evidence:

(i) Documentary evidence by way of Court's/Government's orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest ordering his detention; or

(ii) Where records of the relevant period are not available, a Non-Availability of Records Certificate (NARC) from the concerned State Government/Union Territory Administration along with a Personal Knowledge

Certificate (PKC) from a prominent freedom fighter who had proven jail suffering of a minimum two years and who happened to be from the same administrative unit.

It is also stated that even after the recognition of the Border Camp sufferings in the Hyderabad Liberation Movement to be at par with underground suffering for the purposes of pension under the S.S.S. Pension Scheme, 1980, none of the participants would have qualified for grant of pension as their sufferings could not have been substantiated by the normal evidentiary requirements (primary or secondary) of the S.S.S. Pension Scheme 1980.

It is further averred in para 13 that the Hyderabad Special Screening Committee (headed by Shri Govind Bhai Shroff) had made an extensive tour of the regions comprising the erstwhile state of Hyderabad with regard to various camps from which the armed struggle was waged. It met the concerned officers of the concerned State, prominent workers of the Hyderabad Liberation Movement and other people before preparing the list of the 98 camps (including 41 in Andhra Pradesh, 37 in Maharashtra and 20 in Karnataka) along with the names of the camp-in-charges. Shri Shroff remained the Chairman of the Committee up to December, 1996. Against an estimated number of about 11000 participants of Hyderabad Liberation Movement, the Committee recommended about 7000 cases during its term, to whom pension was sanctioned. In December, 1996, the Committee was reconstituted under the Chairmanship of Shri N.Giri Prasad, MP (RS). On his death in April, 1997, Shri Ch.Rajeswar Rao, M.L.A., Andhra Pradesh was appointed as Chairman.

It is stated in para 14 that at the instance of Shri C.H.Rajeshwara Rao, Ex-Chairman and other ex-Members of the Hyderabad Special Screening Committee, another 18 Border Camps were added (in July 2004) to the list of 98 camps which had been earlier prepared by the Shroff Committee. It is also stated that the last committee headed by Shri Rajeswar Rao scrutinized all the old as well as new cases and recommended about 13500 cases for grant of pension during its term from April, 1997 till May, 1998. After the work of the Committee had been over, it passed a resolution that all eligible cases were considered. No consolidated, authentic Committee Report (indicating the persons considered, the persons recommended and the persons not recommended) was submitted by the committee. In view of number of complaints received against the cases recommended by the committee, it was decided to get their genuineness verified from the State Government. These claims were thereafter processed as per uniform internal guidelines. After receipt of State verification reports, about 3500 cases had already been sanctioned. The substantial requirements in the internal guidelines were the personal knowledge certificates of other freedom fighters and camp-in-charge certificates, which cannot/were not being counter-checked by Government of India. The state of affairs were continuing till a list of 197 fresh cases, stated to be HSSC-recommended, were received from Shri C.H.Rajeswara Rao, Ex-Chairman of the Hyderabad Special Screening Committee. It was found, after scrutiny of the records that the list was highly questionable and not acceptable. Thereafter, a concerted and continuous exercise was

undertaken to make systemic improvements in the whole process of examining HSSC-recommended cases. In that process, prospective systemic improvements and instructions for rule-bound, lawful functioning were *inter alia* issued vide O.Ms. dated 02-06-2005, 23-08-2005, 12-09-2005, 14-11-2005, 28-11-2005, 02-12-2005, 15-12-2005 and 20-12-2005.

It is also stated in para 19 that the gist of these prospective systemic improvements is as under:

a. O.M. dated 02-06-2005 : for proper upkeep of records.

b. O.M. dated 23-08-2005 and O.M. dated 12-09-2005 : that consideration by the HSSC does not *ipso facto* imply recommendation of the HSSC.

c. O.M. dated 14-11-2005 : for rejection orders to be lawful, speaking, self-contained and error-free, and reflecting therein due application of mind.

d. O.M. dated 28-11-2005 and O.M. dated 20-12-2005 : for proper rule-bound scrutiny of all claims, at every possible stage, even after being approved for calling of IDs, and also before issuance of final sanction orders.

e. O.M. dated 02-12-2005 : for blank HSSC-recommendation slips to be dishonoured.

f. O.M. dated 15-12-2005 : for blank HSSC-recommendation slips (with only names and without patrimony/matrimony) to be dishonoured.

It is also stated that no authentic list of Hyderabad Special Screening Committee recommended cases, compiled on the basis of valid Hyderabad Special Screening Committee recommendation slips, was ever prepared/is available (as per available records on date).

Further it is stated that one appropriate course of action in this problem was to tabulate and analyze the HSSC-recommendation slips in each case. Sample tabulation and analysis of HSSC-recommendation slips had revealed the following:-

(a) In large number of cases, which have been processed as Hyderabad Special Screening Committee-recommended cases. Hyderabad Special Screening Committee-slips are not available.

(b) In many cases, Hyderabad Special Screening Committee-recommendation slips are blank.

(c) In many cases, the Hyderabad Special Screening Committee slips are blank and contain only the name of the applicant.

(d) In many cases, HSSC-recommendation slips are incomplete in some way or other.

(e) HSSC-recommendation slips complete in all respects had been reported by Sections in only very, very few cases.

Thus, it is seen that:

(i) A large number of slips are totally blank.

(ii) In a large number of slips only the name of the applicant had been given without even indicating the patrimony/matrimony (as also other relevant details).

(iii) In a number of slips, though the name of the applicant and patrimony/matrimony had been indicated, other details are incomplete.

(iv) Slips (reportedly) complete in all respects had been found only in few cases.

(v) In a large number of cases which had been processed as HSSC – recommended cases, the HSSC-

recommendation slips are not available.

It is also averred in paras 23 to 26 as hereunder:

> "There is a significant mismatch about the number of cases recommended by Hyderabad Special Screening Committee. The general institutional impression was that "about 13,500" cases were recommended by the Hyderabad Special Screening Committee. However, the available 'Agenda Folders' contain about 14,100 names. The available lists (in Ministry of Home Affairs) referred to State Governments for verification contain about 14,700 names. Government of Andhra Pradesh alone has communicated that around 15070 cases were referred to them. They type of mismatch is wholly undesirable and unacceptable in a matter which involves burden on the public exchequer and *Samman* to genuine freedom fighters.
>
> It may also be stated that the Government of Andhra Pradesh, on receipt of large-scale complaints, has ordered the State's Vigilance and Enforcement Department to conduct detailed enquiries into the claims of freedom fighters in four districts. These vigilance enquiries were ordered (in July and November, 2005) on complaints like bogus freedom fighters, under-aged persons, bogus date of birth certificates, false certificates in support of claims, etc.
>
> It has been decided on 02-12-2005 that, pending the final findings in these vigilance enquiries, the final sanction of pension in these four districts [Karimnagar, Khammam, Nalgonda and Warangal] may be kept in abeyance.
>
> A signed, specific and serious complaint from an ex-LMB Chairman and Ex-Subimalla Taluka Congress Party President, referred to the State Government by MHA, is under enquiry with the Crime Branch, CID, Government of Andhra Pradesh.
>
> Report of the State Government is awaited."

Further it is stated in Paragraphs 27 to 32 as hereunder:

> "After discovery of the above facts during an internal investigation, it was decided in January, 2006 that no sanction or approval for calling Identification Documents (IDs) may be given in any case [Court orders (after correct

examination) excluded], till (and if) a bona fide and correct course of action is approved at the competent level.

It had also come to notice that there were several cases in which contradictory State reports had been received from the State Government. Cases were initially rejected, based on the negative recommendations of the State Government. The same cases were, however, subsequently sanctioned, based on subsequent positive recommendations of the State Government. These fresh reports made no reference to the fact that the same cases had earlier not been recommended for sanction. The Government of Andhra Pradesh has been requested to clarify as to (a) how the cases, which were initially not recommended for sanction, were subsequently recommended for sanction and (b) why no reference was made to the earlier (negative) State reports in the subsequent (positive) State reports, when the same cases were under reference.

Reply from the State Government is awaited.

In a few instances, where pension had been sanctioned on the basis of State Government's verifications reports, subsequent re-verifications have shown that the claimants were not eligible for pension as they were minors at the time of the movement. One person, on whose certification a case had been (earlier) recommended by the State Government, has, then, stated that he has never issued any certificate to the claimant. These instances have cast a serious doubt on the verification of cases at the end of the State Governments.

In view of the foregoing, it has been considered imperative that a precise and thorough field verification is conducted in order to ascertain the authenticity of each individual case in cooperation with the Government of Andhra Pradesh. This need has arisen primarily on account of gaps in documentation maintained by the Committee and its non-adherence to administrative procedures during the period of its functioning and also during subsequent

reconciliation of records in the Ministry.

It has been decided in-principle (on 16-06-2006) that a master list of all the cases referred to the Government of Andhra Pradesh for verification will be prepared by the Ministry and scrutiny of this list will be carried out at the field level jointly in conjunction with the concerned district authorities of the State Governments in order to identify eligible freedom fighters in consonance with the prescribed eligibility criteria. This exercise will be limited to the recommendations made by the Rajeshwar Rao Committee alone and the issue of past sanctions will not be reopened.

Necessary preliminary work for preparing a concrete proposal, for competent approval (i.e., of the Cabinet), is currently being initiated."

In reply to the contentions it is stated that petitioner had claimed that his case had been considered by the Hyderabad Special Screening Committee (HSSC). However, it is to point out that consideration does not *ipso facto* imply recommendation. In the absence of a valid recommendation slip of the HSSC, it cannot be presumed that his case had been duly recommended by the HSSC. There is no other document on record to fully and duly establish that his case had been recommended by the HSSC. Therefore, petitioner's case cannot be taken to be an HSSC-recommended case. Further it is averred that the HSSC-recommendation slip in the file of the petitioner is blank and can, therefore, not be accepted as a valid HSSC-recommended slip. Even the petitioner's name and father's name had not been mentioned. The name of the border camp & certifer, date of receipt of application,

age/date of birth, etc., none of essential, basic particulars are mentioned in the slip. None of the columns (which show due chronological filling-up/processing of the HSSC-recommendation slip) had been filled up, and all the columns are blank (including the recommendation columns). The signatures of the Committee members were undated. Two committee members had not signed the slip. Below the signatures, there is an undated handwritten note, which, as discernable to the naked eye, appears to be of one the Committee members. It mentions that “he is a genuine FF.”. This blank HSSC-recommendation slip does not show the due process of examination and consideration of the claim; it also does not reflect the due recommendation-making process; and nor does it mention the specific recommendation (for or against). Therefore, this type of a blank slip is not a valid recommendation slip and the case therefore cannot be taken to be an HSSC-recommended case. Therefore, as per the present policy outlined above in paras 18-19 the claim of the petitioner had been rejected.

Further it is stated that without prejudice to the foregoing, as submitted in paras 30 and 31, modalities for conducting scrutiny of cases, referred for verification to the State Government, to be carried out at the field level, jointly in conjunction with the concerned district authorities of the State Governments, in order to identify eligible freedom fighters in consonance with the prescribed

eligibility criteria, are being processed for approval at competent levels. Thereafter, the petitioner's case would also be processed like all other similar cases in accordance with the uniform policy in such cases. Further, as regards grant of pension to some persons referred to in para 3 of the writ petition, it is stated that those cases had been processed as per the policy in force at that time. However, none of those cases contain valid HSSC-recommendation slip, complete in all respects. All these sanctioned cases would be subject to re-verification in accordance with the policy decision taken in this matter. It is further stated that any wrong sanctions cannot be a precedent for further wrong sanctions. The case, therefore, had been rightly rejected.

Certain other documents are shown. In the light of the respective stands taken by the parties, this Court is of the considered opinion that the rejection, in the facts and circumstances, cannot be sustained. Hence, the rejection is hereby set aside. Since in the light of the material placed before the Court, the issue may have to be reconsidered again and accordingly the Writ Petition is disposed of directing the respondents to reconsider the whole issue in the light of the material placed before the Court, in the facts and circumstances, within a period of six weeks from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. No order as to costs.

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Justice

P.S.Narayana

Dated 02nd November, 2007

skmr

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No. 13253 of 2006

Dated: 02nd November, 2007

BETWEEN:

Muthineni Venkateswarlu

.. Petitioner

And

The Under-Secretary, Govt. of India,
Ministry of Home Affairs, Lok Nayak
Bhavan, First Floor, Khan Market,
New Delhi and another

.. Respondents